

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Chang, Tenny; et. al.  
Assignee: Cardica, Inc.  
Title: System for Preparing a Vessel for Anastomosis  
Serial No.: 10/607,524  
Examiner: Diane D. Yabut                      Filed: June 26, 2003  
Docket No.: 133                                      Group Art Unit: 3734

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March 11, 2008

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Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF UNDER 37 CFR §41.37**

**I. REAL PARTY IN INTEREST**

The real party in interest is the assignee, Cardica, Inc. (“Appellant”).

**II. RELATED APPEALS AND INTERFERENCES**

No prior or pending appeals or interferences within the U.S. Patent and Trademark Office are known to Appellant or Appellant’s legal representative which may be related to, directly affect or be directly affected by, or have a bearing on the decision by the Board of Patent Appeals in this appeal.

On May 22, 2007, the assignee filed a complaint in the U.S. District Court for the Northern District of California for interfering patents pursuant to 35 U.S.C. §291, naming Integrated Vascular Interventional Technologies, L.C. (“IVIT”) as the defendant. A copy of this complaint is attached in Appendix 3. This complaint alleges that U.S. Patent No. 7,220,268 of IVIT includes or potentially includes claims with interfering and invalid subject matter in view of U.S. Patents No. 6,391,038 and/or 7,063,712 owned by Cardica. U.S. Pat. No. 6,391,038 is a parent of this application, and U.S. Pat. No. 7,063,712 is a division of U.S. Pat. No. 6,391,038. The Court has not yet issued an opinion as to the merits of the complaint. It is not believed that the pending case in the Northern District of California directly affects or has a bearing on the decision by the Board of Patent Appeals in this

appeal, because the subject matter of the claims in that case differs from the subject matter of the claims appealed in the present continuation-in-part application.

### **III. STATUS OF CLAIMS**

Claims 1-30 and 41-53 stand finally rejected, **and the rejection of these claims is expressly appealed**. These claims are set forth in Appendix 1 attached hereto. Claims 31-40 have been withdrawn; as a result, they are not set forth in Appendix 1.

### **IV. STATUS OF AMENDMENTS**

No amendments were filed after final rejection or are currently pending in this case.

### **V. SUMMARY OF THE INVENTION**

#### **A. Claim 1**

Claim 1 is directed to a system for preparing a graft vessel (404) for anastomosis to a target vessel (580), where the anastomosis has an anastomosis length (770), where that system comprises an anastomosis tool (300) configured to connect the graft vessel (404) and the target vessel (580) upon actuation; and a transfer clamp (672) including two arms (682) movable relative to one another to grasp the graft vessel (404), the transfer clamp (672) configured to be attached to the anastomosis tool (300) to place the graft vessel (404) on the anastomosis tool (300) and to be detached from the anastomosis tool (300) during actuation, where at least one arm (682) includes at least one element (710) having an edge (715), where the length of the edge is related to the anastomosis length (770).<sup>1</sup> Claims 2-30 depend from independent claim 1, and thus add additional limitations to those present in independent claim 1.

#### **B. Claim 41**

Claim 41 is directed to a system for performing anastomosis between a graft vessel (404) and a target vessel (580), where the anastomosis has an anastomosis length (770), where the system comprises a tissue effector (400) that includes an anvil (10) and a staple holder (38) movable relative to the anvil (10); and a transfer clamp (672) connectable to the tissue effector (400), where the transfer clamp (672) includes two arms (682) movable relative to one another, where each arm (682)

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<sup>1</sup> *E.g.*, Specification, page 23, line 10 through page 24, line 15; page 74, line 23 through page 75, line 8; page 78, line 6 through page 80, line 10; page 87, line 23 through page 88, line 3; page 91, line 19 through page 92, line 6; Figures 55, 73-76, 82-86, 88-91.

includes a substantially planar surface (704) with an edge (715), wherein the length of each edge (715) is related to the anastomosis length (770), and wherein the surfaces (704) are substantially opposed to one another.<sup>2</sup> Claims 42-48 depend from independent claim 41, and thus add additional limitations to those present in independent claim 41.

### **C. Claim 49**

Claim 49 is directed to a system for performing anastomosis between a graft vessel (404) and a target vessel (580), where the system comprises a tissue effector (400) that includes an anvil (10) and a staple holder (38) movable relative to the anvil (10), and a mechanism (672) configured to register the graft vessel (404) relative to the tissue effector (400) prior to actuation thereof, and configured to be independent of said tissue effector (400) during actuation thereof.<sup>3</sup> Claims 50-53 depend from independent claim 49, and thus add additional limitations to those present in independent claim 49.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

### **A. Claims 1-30**

Independent claim 1 and dependent claims 2-5, 8-11, 13-15 and 18-22 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,187,019 to Stefanchik (“Stefanchik ‘019”) in view of U.S. Pat. No. 6,036,700 to Stefanchik (“Stefanchik ‘700”) and U.S. Pat. No. 6,994,669 to Gannoe (“Gannoe”).

Dependent claims 5-7 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Stefanchik ‘700, Gannoe, and U.S. Patent Application Publication Serial No. 2002/0095166 to Vargas et. al. (“Vargas”).

Dependent claim 12 stands finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Stefanchik ‘700, Gannoe, and U.S. Pat. No. 4,318,313 to Tartaglia.

Dependent claims 23-37 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Stefanchik ‘700, Gannoe, and U.S. Pat. No. 6,200,263 to Person.

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<sup>2</sup> E.g., Specification, page 23, line 10 through page 24, line 15; page 74, line 23 through page 75, line 8; page 77, line 25 through page 80, line 10; page 87, line 23 through page 88, line 3; page 91, line 19 through page 92, line 6; Figures 55, 73-76, 82-86, 88-91.

<sup>3</sup> E.g., Specification, page 23, line 10 through page 24, line 15; page 74, line 23 through page 75, line 8; page 88, line 19 through page 92, line 6; Figures 55, 73-76, 82-86, 88-91.

Dependent claims 28-30 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Stefanchik ‘700, Gannoe, and U.S. Pat. No. 6,821,286 to Carranza (“Carranza”).

Dependent claims 16-17 are not rejected at any point in the Office Action, and thus, contrary to the cover sheet of the Final Action, do not stand finally rejected, and should have been objected to.

#### **B. Claims 41-48**

Independent claim 41 and dependent claims 42, 45, and 47-48 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019 in view of U.S. Pat. No. 6,066,144 to Wolf (“Wolf”) and Stefanchik ‘700.

Dependent claims 43-44 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Wolf, and Stefanchik ‘700 in further view of Vargas.

Dependent claim 46 stands finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019, Wolf, and Stefanchik ‘700 in further view of Carranza.

#### **C. Claims 49-53**

Independent claim 49 and dependent claims 50-53 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Stefanchik ‘019 in view of Wolf and Stefanchik ‘700.

### **VII. ARGUMENTS**

#### **A. The Cited Art Does Not Render the Claims Obvious**

The MPEP sets forth the legal standard of obviousness under 35 U.S.C. §103. In order to reject a claim based on the combination of alleged prior art elements, MPEP 2143 requires that “Office personnel must articulate the following,” among other elements: “a finding that the prior art included each element claimed,” and “a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately.”<sup>4</sup>

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<sup>4</sup> MPEP 2143 (quoting *Verdegaal Brothers v. Union Oil of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)) (emphasis added).

## 1. Claims 1-30

Claim 1 claims “[a] system for preparing a graft vessel for anastomosis to a target vessel, where the anastomosis has an anastomosis length, the system comprising: an anastomosis tool configured to connect the graft vessel and the target vessel upon actuation; and a transfer clamp including two arms movable relative to one another to grasp the graft vessel, said transfer clamp configured to be attached to said anastomosis tool to place the graft vessel on said anastomosis tool and to be detached from said anastomosis tool during said actuation, wherein at least one said arm comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.”

In contrast, Stefanchik ‘019, Stefanchik ‘700, and Gannoe neither collectively nor individually include each element claimed, as required by MPEP 2143. First, none of the cited references include the claimed “transfer clamp configured to be attached to said anastomosis tool to place the graft vessel on said anastomosis tool and to be detached from said anastomosis tool during said actuation,” and as a result the combination of those references do not and cannot include each element claimed. The Final Action characterizes the clip 80 of Stefanchik ‘019 as being analogous to the claimed transfer clamp. Even if that clip 80 is considered to be analogous to the claimed transfer clamp, which is not admitted, the clip 80 snaps onto the cassette 60 of the anastomosis tool before its actuation.<sup>5</sup> Stefanchik ‘019 performs anastomosis by suturing tissue junctions with the use of spiral needles.<sup>6</sup> The “tissue junctions must be held together firmly along their entire length as the spiral needles advance. This is accomplished by maintaining the close, parallel alignment of the first and second prongs, 82 and 84, of the tissue clip 80.”<sup>7</sup> Thus, Stefanchik ‘019 expressly requires the clip 80 to be attached to the cassette 60 of the anastomosis tool during its actuation in order for it to operate, as illustrated most clearly by Figure 19. This requirement is directly opposite to the requirement of claim 1 of an “anastomosis tool configured to connect the graft vessel and the target vessel upon actuation...and a transfer clamp...configured...to be detached from said anastomosis tool during said actuation.” (emphasis added).

Turning to Stefanchik ‘700, that references merely describes a surgical device 10 for facilitating suturing. Even if that surgical device were considered to be an anastomosis tool, which is not admitted, Stefanchik ‘700 fails to describe a transfer clamp, much less a transfer clamp that is

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<sup>5</sup> Stefanchik ‘019, col. 6, lines 44-49; Figures 8-9.

<sup>6</sup> Stefanchik ‘019; e.g., col. 9, lines 12-14; Figures 15-16, 18-19, 21.

<sup>7</sup> Stefanchik ‘019; col. 9, lines 14-19 (emphasis added).

“configured to be attached to said anastomosis tool to place the graft vessel on said anastomosis tool and to be detached from said anastomosis tool during said actuation,” as required by claim 1. Indeed, the Final Action admits as much by failing to identify any structure in Stefanchik ‘700 that is analogous to the claimed transfer clamp, and properly does not contend that any part of Stefanchik ‘700 is analogous to the claimed transfer clamp.<sup>8</sup>

Turning to Gannoe, that reference merely discloses “a commercially-available vascular clamp 203.”<sup>9</sup> That clamp 203 is connected to a standard surgical retractor.<sup>10</sup> Even if that vascular clamp 203 were considered to be a transfer clamp, which is not admitted, Gannoe fails to describe an anastomosis tool, such that it necessarily cannot describe the claimed transfer clamp “configured to be attached to said anastomosis tool to place the graft vessel on said anastomosis tool and to be detached from said anastomosis tool during said actuation,” as required by claim 1. Indeed, the Final Action admits as much by failing to identify any structure in Gannoe that is analogous to the claimed anastomosis tool, and properly does not contend that any part of Gannoe is analogous to the claimed anastomosis tool.<sup>11</sup>

Thus, not only do the cited references collectively fail to include each element claimed in claim 1, but also the cited references, in combination, do not include elements that merely perform the same function as they do separately.

Second, none of the cited references include the claimed “transfer clamp including two arms movable relative to one another to grasp the graft vessel...wherein at least one said arm comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.” Stefanchik ‘019 does not describe a transfer clamp, much less a transfer clamp having “two arms movable relative to one another to grasp the graft vessel.” Even if that clip 80 is considered to be analogous to the claimed transfer clamp, which is not admitted, the clip 80 spears the graft vessel 152 with the second prong 84 of the clip 80, as seen most clearly in Figure 10.<sup>12</sup> The clip 80 does not “grasp” the graft vessel between two arms. Further, neither prong 82, 84 of the clip 80 includes an “edge.” Rather, each prong 82, 84 is tubular, as seen most clearly in Figure 17, and thus is smoothly curved such that neither prong includes “at least one element having an edge.”<sup>13</sup> As a

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<sup>8</sup> Final Action, page 3, first full paragraph.

<sup>9</sup> Gannoe; col. 17, lines 11-14.

<sup>10</sup> *Id.*; col. 6, lines 59-61; col. 17, lines 21-25.

<sup>11</sup> Final Action, page 3, final paragraph.

<sup>12</sup> Stefanchik ‘019; col. 6, lines 50-65; Figure 10.

<sup>13</sup> *Id.*; Figure 17.

result, Stefanchik '019 does not and cannot describe the claimed “at least one said arm [that] comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.” Further, as set forth above, Stefanchik '700 fails to describe a transfer clamp, and the Final Action does not contend that it does. Additionally, as set forth above, Gannoe merely describes a standard commercially-available vascular clamp, and is silent as to any relationship between any part of that vascular clamp and the anastomosis length.

Thus, not only do the cited references collectively fail to include each element claimed in claim 1, but also the cited references, in combination, do not include elements that merely perform the same function as they do separately.

Third, modifying Stefanchik '019 as proposed by the Final Action would render it unsatisfactory for its intended purpose under MPEP 2143.01(V). Stefanchik '019 performs anastomosis by suturing tissue junctions with the use of spiral needles.<sup>14</sup> The “tissue junctions must be held together firmly along their entire length as the spiral needles advance. This is accomplished by maintaining the close, parallel alignment of the first and second prongs, 82 and 84, of the tissue clip 80.”<sup>15</sup> Thus, Stefanchik '019 expressly requires that the clip 80 be attached to the cassette of the anastomosis tool during its actuation, as illustrated most clearly by Figure 19. However, claim 1 requires “a transfer clamp...configured...to be detached from said anastomosis tool during said actuation.”<sup>16</sup> Any teaching in Stefanchik '700 or Gannoe that the clip 80 should be removed during actuation would therefore render Stefanchik '019 unsatisfactory for its intended purpose, such that the references cannot be combined.

For these reasons, the cited art does not include each element claimed in claim 1, nor could one of ordinary skill in the art have combined the elements as claimed by known methods, where in combination, each element merely performs the same function as it does separately. As a result claim 1 is in condition for allowance. Claims 2-30 depend from claim 1, and are thus in condition for allowance as well under MPEP 608.01(n)(III).

## 2. Claims 41-48

Claim 41 claims “[a] system for performing anastomosis between a graft vessel and a target vessel, where the anastomosis has an anastomosis length, the system comprising: a tissue effector

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<sup>14</sup> Stefanchik '019; *e.g.*, col. 9, lines 12-14; Figures 15-16, 18-19, 21.

<sup>15</sup> Stefanchik '019; col. 9, lines 14-19 (emphasis added).

<sup>16</sup> Emphasis added.

comprising an anvil, and a staple holder movable relative to said anvil; and a transfer clamp connectable to said tissue effector, said transfer clamp including two arms movable to one another, wherein each said arm includes a substantially planar surface with an edge, wherein the length of each said edge is related to the anastomosis length, and wherein said surfaces are substantially opposed to one another.”

In contrast, Stefanchik ‘019, Stefanchik ‘700, and Wolf neither collectively nor individually include each element claimed, as required by MPEP 2143. First, claim 41 requires “transfer clamp including two arms movable to one another, wherein each said arm includes a substantially planar surface with an edge.” However, none of the cited references describe such a transfer clamp, and as a result those cited references do not and cannot collectively describe such a transfer clamp. Stefanchik ‘019 does not describe a transfer clamp, much less a transfer clamp having “two arms movable relative to one another to grasp the graft vessel.” Even if that clip 80 is considered to be analogous to the claimed transfer clamp, which is not admitted, neither prong 82, 84 of the clip 80 includes either a “planar surface” or an “edge.” Rather, each prong 82, 84 is tubular, as seen most clearly in Figure 17, and thus is smoothly curved such that neither prong includes “at least one element having an edge.”<sup>17</sup> Turning to Stefanchik ‘700, that reference fails to describe a transfer clamp. The Final Action contends that the arms 118, 128 of the surgical device 110 of Stefanchik ‘700 are analogous to the claimed arms of the transfer clamp. However, the surgical device of Stefanchik ‘700 is a standalone suture guide that is not connectable to a tissue effector comprising an anvil and a staple holder; indeed, staples are superfluous in the surgical device of Stefanchik ‘700, because the point of that device is to facilitate suturing.<sup>18</sup> Further, even if the surgical device of Stefanchik ‘700 were analogous to the claimed transfer clamp, which it is not, the arms 118, 128 are located proximal to and are spaced apart from the distal portions 126, 136 that actually contact the graft vessel 150.<sup>19</sup> As a result, the arms 118, 128 are spaced apart from the anastomosis, and are irrelevant to the anastomosis length. Turning to Wolf, that reference also fails to describe a transfer clamp, and the Final Action properly does not contend that it does.<sup>20</sup> Because neither Stefanchik ‘700 nor Wolf describe a transfer clamp, they necessarily fail to describe the claimed “transfer clamp

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<sup>17</sup> *Id.*; Figure 17.

<sup>18</sup> Stefanchik ‘700; *e.g.*, col. 4, lines 42-48; Figures 14-18.

<sup>19</sup> *Id.*; col. 7, lines 59-62; Figures 10-11.

<sup>20</sup> Final Action; page 9.



including two arms movable to one another, wherein each said arm includes a substantially planar surface with an edge.”

Second, the Final Action violated MPEP 2143 by rejecting claim 41 without presenting any reasoning as to the rejection of the claim element “each said arm includes a substantially planar surface.” For an obviousness rejection to be proper, “Office personnel must articulate...a finding that the prior art included each element claimed.”<sup>21</sup> By failing to consider the “substantially planar surface” limitation, the Office did not and could not articulate a finding that the prior art included each element claimed. Further, by failing to identify any structure in the references that is purportedly analogous to the claimed “substantially planar surface,” the rejection of claim 41 violated the Administrative Procedure Act, which requires federal administrative agencies such as the Patent and Trademark Office must support their decisions with “substantial evidence” for those decisions to be valid.<sup>22</sup>

Third, none of the cited references include the claimed “transfer clamp including two arms movable relative to one another to grasp the graft vessel...wherein at least one said arm comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.” Stefanchik ‘019 does not describe a transfer clamp, much less a transfer clamp having “two arms movable relative to one another to grasp the graft vessel.” Even if that clip 80 is considered to be analogous to the claimed transfer clamp, which is not admitted, the clip 80 spears the graft vessel 152 with the second prong 84 of the clip 80, as seen most clearly in Figure 10.<sup>23</sup> The clip 80 does not “grasp” the graft vessel with two arms. Further, neither prong 82, 84 of the clip 80 includes an “edge.” Rather, each prong 82, 84 is tubular, as seen most clearly in Figure 17, and thus is smoothly curved such that neither prong includes “at least one element having an edge.”<sup>24</sup> As a result, Stefanchik ‘019 does not and cannot describe the claimed “at least one said arm [that] comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.” Further, as set forth above, Stefanchik ‘700 fails to describe a transfer clamp. Even if it did, which it does not, the length of the arms 118, 128 of Stefanchik ‘700 is irrelevant to the anastomosis length, because those arms 118, 128 are spaced apart from the anastomosis. Further, as set forth above, Wolf merely describes a staple holder and an anvil, and does not describe a transfer

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<sup>21</sup> MPEP 2143 (emphasis added).

<sup>22</sup> 5 U.S.C. § 706; *Dickinson v. Zurko*, 1999 U.S. Lexis 4004, \*24; 527 U.S. 150 (1999) (citing *SEC v. Chenery Corp.*, 318 U.S. 80, 89-93(1943)).

<sup>23</sup> Stefanchik ‘019; col. 6, lines 50-65; Figure 10.

<sup>24</sup> *Id.*; Figure 17.

clamp; as a result, Wolf does not and cannot describe a transfer clamp having an edge with a length related to the anastomosis length.

For these reasons, the cited art does not include each element claimed in claim 41, nor could one of ordinary skill in the art have combined the elements as claimed by known methods, where in combination, each element merely performs the same function as it does separately. As a result claim 41 is in condition for allowance. Claims 42-48 depend from claim 41, and are thus in condition for allowance as well under MPEP 608.01(n)(III).

### 3. Claims 49-53

Claim 49 claims “[a] system for performing anastomosis between a graft vessel and a target vessel, comprising: a tissue effector comprising an anvil, and a staple holder movable relative to said anvil; and a mechanism configured to register the graft vessel relative to said tissue effector prior to actuation thereof, and configured to be independent of said tissue effector during actuation thereof.”

In contrast, Stefanchik ‘019, Stefanchik ‘700, and Wolf neither collectively nor individually include each element claimed, as required by MPEP 2143. First, as set forth above with regard to claim 1, none of the cited references describe a transfer clamp, or any other mechanism “configured to register the graft vessel relative to said tissue effector prior to actuation thereof, and configured to be independent of said tissue effector during actuation thereof.” Second, as set forth above with regard to claim 1, any teaching in Stefanchik ‘700 or Wolf that the clip 80 should be independent of a tissue effector during actuation would render Stefanchik ‘019 unsatisfactory for its intended purpose, such that MPEP 2143.01(V) prohibits the combination of those references.

For these reasons, the cited art does not include each element claimed in claim 49, nor could one of ordinary skill in the art have combined the elements as claimed by known methods, where in combination, each element merely performs the same function as it does separately. As a result claim 49 is in condition for allowance. Claims 50-53 depend from claim 49, and are thus in condition for allowance as well under MPEP 608.01(n)(III).

## **VIII. CONCLUSION**

For at least the above reasons, Applicants respectfully submit that the Final Action's rejection of pending claims 1-30 and 41-53 was unfounded. Accordingly, Applicants request that the rejection of those claims be reversed and that those claims be allowed.

Respectfully submitted,

/Brian A. Schar, Esq./

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## **APPENDIX 1 -CLAIMS**

1. A system for preparing a graft vessel for anastomosis to a target vessel, where the anastomosis has an anastomosis length, the system comprising:
  - an anastomosis tool configured to connect the graft vessel and the target vessel upon actuation; and
  - a transfer clamp including two arms movable relative to one another to grasp the graft vessel, said transfer clamp configured to be attached to said anastomosis tool to place the graft vessel on said anastomosis tool and to be detached from said anastomosis tool during said actuation, wherein at least one said arm comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.
2. The system of claim 1, wherein at least one said element is a jaw connected to said arm.
3. The system of claim 2, wherein said jaw is fixed to said arm.
4. The system of claim 2, wherein said jaw is movable relative to said arm.
5. The system of claim 1, wherein at least one said element is a cutting block.
6. The system of claim 5, wherein at least one said cutting block is movable relative to the corresponding said arm.
7. The system of claim 5, wherein at least one said cutting block is rotatable relative to the corresponding said arm.
8. The system of claim 1, wherein at least one said element has a gripping surface defined thereon.
9. The system of claim 1, wherein at least one said element is a portion of said arm.
10. The system of claim 1, wherein said arms are movable between an open position and a closed position.

11. The system of claim 10, wherein said arms are biased to said closed position.
12. The system of claim 10, further comprising finger pads coupled to said arms, wherein compression of said finger pads moves said arms from said closed position to said open position.
13. The system of claim 1, wherein said transfer clamp is configured to engage the anastomosis tool.
14. The system of claim 13, wherein said transfer clamp includes a stop configured to contact the anastomosis tool.
15. The system of claim 14, wherein said transfer clamp is configured to lock onto the anastomosis tool.
16. The system of claim 1, further comprising an extension arm connected to said transfer clamp.
17. The system of claim 16, wherein said extension arm is fixed to said transfer clamp.
18. The system of claim 16, wherein said extension arm includes a poke-through tip.
19. The system of claim 18, wherein said poke-through tip is soft.
20. The system of claim 18, wherein said poke-through tip is substantially rigid.
21. The system of claim 18, wherein said poke-through tip is substantially tubular.
22. The system of claim 18, wherein said poke-through tip is located at one end of said extension arm.
23. The system of claim 16, further comprising a retractor mount connectable to said extension arm.
24. The system of claim 23, wherein said retractor mount includes a holder movable relative to a remainder of said retractor mount.

25. The system of claim 24, wherein said holder is rotatable relative to a remainder of said retractor mount.

26. The system of claim 24, wherein said retractor mount is connectable to said extension arm via said holder.

27. The system of claim 24, wherein said holder is configured to engage the anastomosis tool.

28. The system of claim 1, further comprising a graft manipulator movable relative to said transfer clamp.

29. The system of claim 28, wherein said graft manipulator includes two members spaced apart from and biased apart from one another.

30. The system of claim 29, further comprising a prong connected to the distal end of at least one said member.

41. A system for performing anastomosis between a graft vessel and a target vessel, where the anastomosis has an anastomosis length, the system comprising:

- a tissue effector comprising

- an anvil, and

- a staple holder movable relative to said anvil; and

- a transfer clamp connectable to said tissue effector, said transfer clamp including two arms movable to one another, wherein each said arm includes a substantially planar surface with an edge, wherein the length of each said edge is related to the anastomosis length, and wherein said surfaces are substantially opposed to one another.

42. (previously presented) The system of claim 41, wherein said transfer clamp includes at least one said arm, wherein at least one said arm comprises at least one element having an edge, wherein the length of said edge is related to the anastomosis length.

43. (original) The system of claim 42, wherein at least one said element is a cutting block.
44. (original) The system of claim 43, wherein at least one said cutting block is rotatable relative to the corresponding said arm.
45. (original) The system of claim 41, further comprising a poke-through tip connected to said transfer clamp.
46. (previously presented) The system of claim 41, further comprising a graft manipulator movable relative to said transfer clamp.
47. (original) The system of claim 41, wherein said transfer clamp is configured to register the graft vessel relative to said tissue effector.
48. (original) The system of claim 41, wherein said transfer clamp is configured to positively engage said tissue effector.
49. (previously presented) A system for performing anastomosis between a graft vessel and a target vessel, comprising:
- a tissue effector comprising
    - an anvil, and
    - a staple holder movable relative to said anvil; and
  - a mechanism configured to register the graft vessel relative to said tissue effector prior to actuation thereof, and configured to be independent of said tissue effector during actuation thereof.
50. (original) The system of claim 49, wherein at least one flap is located at an end of the graft vessel, wherein said staple holder includes at least one flap receiving surface, and wherein said mechanism is configured to register at least one flap with at least one said flap receiving surface.
51. (previously presented) The system of claim 50, further comprising at least one spike extending from at least one said flap receiving surface.

52. (original) The system of claim 49, wherein said mechanism is connectable to said tissue effector.

53. (original) The system of claim 49, wherein said mechanism is configured to positively engage said tissue effector.



## **APPENDIX 2 – EVIDENCE APPENDIX**

None.

### **APPENDIX 3 – RELATED PROCEEDINGS APPENDIX**

Exhibit 1.....Complaint for Interfering Patents Action Pursuant to 35 U.S.C. §291; United States District Court, Northern District of California; filed May 22, 2007.

# **EXHIBIT 1**

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I.(a) PLAINTIFFS

CARDICA, INC.

## DEFENDANTS

INTEGRATED VASCULAR INTERVENTIONAL TECHNOLOGIES, L.C.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Mateo  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Salt Lake  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
SIDLEY AUSTIN LLP, 555 West Fifth Street, Suite 4000  
Los Angeles, California 90013 - (213) 896-6000

ATTORNEYS (IF KNOWN)

E-filing

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |                                         |                            |                            |                                                               |                            |                            |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
|                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding  
☐ Removed from State Court  
☐ Remanded from Appellate Court  
☐ Reinstated or Reopened  
☐ Transferred from Another district (specify)  
☐ Multidistrict Litigation  
☐ Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employee Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (408(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

## VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$  CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

5/22/07

SIGNATURE OF ATTORNEY OF RECORD

SIDLEY AUSTIN LLP  
JEFFREY M. OLSON (SBN 104074)  
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(213) 896-6600 fax

Attorneys for Plaintiff  
CARDICA, INC.

**COPY**

**ORIGINAL  
FILED**

MAY 22 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**E-filing**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**BZ**

**2687**

CARDICA, INC., a Delaware corporation,

Plaintiff,

v.

INTEGRATED VASCULAR  
INTERVENTIONAL TECHNOLOGIES, L.C.,  
a Utah limited liability company,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR INTERFERING  
PATENTS ACTION PURSUANT TO  
35 U.S.C. § 291**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, Cardica, Inc. ("Cardica"), through its attorneys, allege for its complaint against  
2 Defendant, Integrated Vascular Interventional Technologies, L.C. ("IVIT"), upon knowledge with  
3 respect to Cardica's own actions and upon information and belief with respect to the actions of  
4 others:

### 5 JURISDICTION AND VENUE

6 1. This Court has original jurisdiction over the subject matter of this action pursuant to  
7 the provisions of Title 28, United States Code §§ 1331, and 1338(a), this action arising under the  
8 Patent Laws of the United States, Title 35 U.S.C. § 1, et seq., including 35 U.S.C. § 291.

9 2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) because a  
10 substantial part of the events giving rise to this 35 U.S.C. § 291 interference claim occurred in this  
11 district, a substantial part of the property that is the subject of this action is situated in this district,  
12 and/or IVIT is subject to personal jurisdiction in this district.

13 3. On information and belief, IVIT and/or one or more of its predecessors-in-interest,  
14 including Duane Blatter ("Blatter"), conducts business in California, including traveling to San  
15 Francisco, California and attending a scientific meeting in San Francisco, California where Blatter  
16 purportedly invented (according to IVIT) subject matter that is at issue in this interference action.

### 17 THE PARTIES

18 4. Cardica is a Delaware corporation having its principal place of business at 900  
19 Saginaw Drive, Redwood City, CA 94063.

20 5. On information and belief, IVIT is a Utah limited liability company with a principal  
21 place of business at 825 North 300 West, Suite NE 302, Salt Lake City, UT 84103. IVIT is the  
22 named assignee of United States Patent No. 7,220,268 (hereafter referred as the "'268 patent"). A  
23 copy of the '268 patent is attached to this complaint as Exhibit A.

24 6. On information and belief, Blatter is the founder and managing partner of IVIT.

### 25 FACTUAL BACKGROUND

26 7. Cardica re-alleges and incorporates by reference paragraphs 1-6 above, as though  
27 fully stated herein.

1           8.     On June 20, 2006, United States Patent Nos. 7,063,712 (the “712 patent”), entitled  
2 “Anastomosis Method,” was issued by the United States Patent and Trademark Office (“USPTO”).  
3 The ‘712 patent is a continuation of U.S. Patent No. 6,478,804, which is a division of U.S. Patent  
4 No. 6,391,038 (the “038 Patent”). The ‘038 Patent was issued by the USPTO on May 21, 2002.  
5 Cardica is the owner of all three patents referred to in this paragraph.

6           9.     The ‘038 patent is attached to this complaint as Exhibit B, and the ‘712 patent is  
7 attached to this complaint as Exhibit C.

8           10.    The subject matter of the ‘038 patent and ‘712 patent was invented in this district.

9           11.    On May 22, 2007, the ‘268 patent, entitled “Methods for Anastomosis of a Graft  
10 Vessel to a Side of a Receiving Vessel,” was issued by the USPTO.

11          12.    On the face of the ‘268 patent, it claims to be a continuation of U.S. Patent  
12 Application Serial No. 10/243,543, entitled “Anvil Apparatus for Anastomosis and Related Methods  
13 and Systems,” filed on September 12, 2002. U.S. Patent Application Serial No. 10/243,543 is  
14 hereafter referred to as the “543 Application.” Blatter is the named inventor of the ‘543  
15 Application, and IVIT is the assignee of the ‘543 Application.

16          13.    The ‘543 Application claims to be a continuation of U.S. Application Serial No.  
17 09/293,366, entitled “Methods, Systems and Apparatus for Intraluminally Directed Vascular  
18 Anastomosis,” filed on April 16, 1999. On information and belief, U.S. Application Serial No.  
19 09/293,366 issued into U.S. Patent No. 6,623,494 on September 23, 2003.

20          14.    The ‘543 Application and the ‘038 patent were the subject of a patent interference  
21 proceeding, captioned *Vargas et al. v. Blatter*, Patent Interference No. 105,426, before the Board of  
22 Patent Appeals and Interferences of the USPTO. This interference proceeding is hereafter referred  
23 to as the “USPTO Interference Action.”

24          15.    Claim 12 of the ‘543 Application has been declared as corresponding to the count of  
25 the USPTO Interference Action. Claim 12 of the ‘543 Application recites:

26                A method of controlling tissue at an anastomosis site during an  
27 anastomosis procedure, the method comprising:  
28                inserting an anvil into a pressurized target vessel;

1 supporting a wall of the pressurized target vessel at an intended  
2 anastomosis site with the anvil positioned adjacent an interior of the wall;  
3 clamping a wall of the pressurized target vessel between the anvil and a  
4 clamp;  
5 forming an incision in the wall of the pressurized target vessel before  
6 attaching the vessels together;  
7 attaching a graft vessel to the pressurized target vessel;  
8 and removing the anvil.

9 16. Claim 12 was not made in the '543 Application prior to one year from the date of the  
10 issuance of the '038 patent.

11 17. Claims 1, 2, 5-8, 10-12, 15, and 17-19 of the '038 Patent have been declared as  
12 corresponding to the count of the USPTO Interference Action. Claim 1 of the '038 patent recites:

13 A method of controlling a tissue site during an anastomosis procedure, the  
14 method comprising:

15 inserting an anvil into a pressurized vessel at an intended anastomosis site;  
16 supporting a wall of the pressurized vessel at the intended anastomosis site  
17 with the anvil positioned adjacent an interior of the wall;  
18 performing anastomosis; and  
19 removing the anvil.

20 18. In the USPTO Interference Action, IVIT contends that Blatter purportedly invented  
21 the subject matter of '543 Application, which shares the same written description and subject matter  
22 as the '268 patent, in San Francisco, California when he attended the SCVIR 23<sup>rd</sup> Annual Scientific  
23 Meeting in San Francisco, California held on February 28 to March 5, 1998.

24 19. On February 13, 2007, the Board of Patent Appeals and Interferences entered  
25 judgment against IVIT in the USPTO Interference Action and (1) awarded priority of the subject  
26 matter of the count to Cardica and (2) ordered that IVIT is not entitled to a patent containing claim  
27 12 of the '543 Application because such claim was not made in the '543 Application prior to one  
28 year from the date of the issuance of the '038 patent. The USPTO Interference Action was recently



1 terminated when the time for an appeal of the February 13, 2007 judgment expired without any  
2 appeal having been taken, and IVIT is now bound by that judgment.

3 **INTERFERENCE PURSUANT TO 35 U.S.C. § 291**

4 20. Cardica re-alleges and incorporates by reference paragraphs 1-19 above, as though  
5 fully stated herein.

6 21. The '268 patent includes or potentially includes claims with interfering and invalid  
7 subject matter in view of the '038 patent and/or '712 patent owned by Cardica.

8 22. By way of example of an actual or potentially interfering and invalid subject matter in  
9 the '268 patent in view of the '038 patent and/or '712 patent, claim 100 of the '268 patent recites:

10 *'268 patent Claim 100.* A method for anastomosis of a graft vessel to a  
11 side of a receiving vessel, the method comprising:

12 positioning an anvil within a lumen of a receiving vessel at an anastomosis  
13 site of the receiving vessel, wherein the anastomosis site is located at a side of the  
14 receiving vessel, wherein a component extends from the anvil, and wherein the  
15 component extends through the wall of the receiving vessel;

16 holding a portion of the wall of the receiving vessel at the anastomosis site  
17 between the anvil and a component of an extravascular device to isolate a region  
18 of the wall and to stretch at least part of the isolated region prior to forming an  
19 anastomosis opening, wherein the component of the extravascular device is  
20 positioned outside of a graft vessel lumen;

21 joining a graft vessel to the side of the receiving vessel at the anastomosis  
22 site;

23 cutting the wall of the receiving vessel to form an anastomosis opening in  
24 the side of the receiving vessel at the anastomosis site; and

25 removing the anvil from the anastomosis site after the graft vessel has  
26 been joined to the side of the receiving vessel and the opening has been formed in  
27 the receiving vessel, wherein anvil is positioned in the anastomosis site while the  
28 receiving vessel remains pressurized, wherein the anvil enables the receiving

1 vessel to remain pressurized as the graft vessel is joined to the side of the  
2 receiving vessel and as the opening is formed in the receiving vessel at the  
3 anastomosis site.

4 23. Claim 100 was not made in the application that issued into the '268 patent prior to  
5 one year from the date of the issuance of the '038 patent.

6 24. Claims 1, 2, 5, and 8 of the '038 patent recite:

7 *'038 patent Claim 1.* A method of controlling a tissue site during an  
8 anastomosis procedure, the method comprising:

9 inserting an anvil into a pressurized vessel at an intended anastomosis site;  
10 supporting a wall of the pressurized vessel at the intended anastomosis site  
11 with the anvil positioned adjacent an interior of the wall;  
12 performing anastomosis; and  
13 removing the anvil.

14 *'038 patent Claim 2.* The method of claim 1, further comprising a step of  
15 forming an incision in the wall of the pressurized vessel after the step of  
16 performing the anastomosis to allow blood flow between the pressurized vessel  
17 and a graft vessel.

18 *'038 patent Claim 5.* The method of claim 2, wherein the incision is made  
19 before removing the anvil.

20 *'038 patent Claim 8.* The method of claim 1, further comprising a step of  
21 clamping a wall of the pressurized vessel between the anvil and a clamp, and  
22 forming an incision in the wall of the pressurized vessel before the step of  
23 performing the anastomosis.

24 25. Claims 8 and 9 of the '712 patent recite:

25 *'712 patent Claim 8.* A method of performing anastomosis between a  
26 graft vessel and a target vessel, comprising:

27 placing an end of the graft vessel against the side of the target vessel at a  
28 first location;

1 inserting an anvil through the side of the target vessel at a second location  
2 adjacent to said first location;

3 deploying a plurality of connectors to secure the graft vessel to the target  
4 vessel; and

5 creating an opening in the target vessel to allow fluid flow between the  
6 graft vessel and the target vessel.

7 *'712 patent Claim 9.* The method of claim 8, wherein said inserting  
8 comprises pressing said anvil through the side of the target vessel.

9 26. Taking into consideration the contentions advanced by IVIT in the USPTO  
10 Interference Action, including contentions as to claim construction and the understanding of one  
11 skilled in the art, claim 100 of the '268 patent contains actual or potentially interfering and invalid  
12 subject matter in view of at least claims 1, 2, 5, and 8 of the '038 patent and/or claims 8 and 9 of the  
13 '712 patent.

14 27. By way of further example of an actual or potentially interfering and invalid subject  
15 matter in the '268 patent in view of the '038 patent and/or '712 patent, claim 78 of the '268 patent  
16 recites:

17 *'268 patent Claim 78.* A method for anastomosis of an open end of a graft  
18 vessel to a side of a receiving vessel, the method comprising:

19 positioning an anvil within a lumen of a receiving vessel at an anastomosis  
20 site of the receiving vessel, wherein the anastomosis site is located at a side of the  
21 receiving vessel;

22 manipulating the anvil via a component extending from the anvil to cause  
23 a region of a wall of the receiving vessel at the anastomosis site to stretch and to  
24 conform to the shape of a portion of the anvil contacting the wall of the receiving  
25 vessel, wherein the component extends through the wall of the receiving vessel;

26 joining a graft vessel to the side of the receiving vessel at the anastomosis  
27 site;  
28

1 forming an anastomosis opening in the wall of the receiving vessel at the  
2 anastomosis site, wherein the anastomosis opening is distinct from an opening  
3 used to achieve the introduction of the anvil into the lumen of the receiving  
4 vessel; and

5 removing the anvil from the anastomosis site, after the graft vessel has  
6 been joined to the side of the receiving vessel and the opening has been formed in  
7 the receiving vessel, wherein the receiving vessel remains pressurized as the graft  
8 vessel and the receiving vessel are anastomosed together.

9 28. Claim 78 was not made in the application that issued into the '268 patent prior to one  
10 year from the date of the issuance of the '038 patent.

11 29. Claims 1, 2, and 5 of the '038 patent recite:

12 *'038 patent Claim 1.* A method of controlling a tissue site during an  
13 anastomosis procedure, the method comprising:

14 inserting an anvil into a pressurized vessel at an intended anastomosis site;  
15 supporting a wall of the pressurized vessel at the intended anastomosis site  
16 with the anvil positioned adjacent an interior of the wall;  
17 performing anastomosis; and  
18 removing the anvil.

19 *'038 patent Claim 2.* The method of claim 1, further comprising a step of  
20 forming an incision in the wall of the pressurized vessel after the step of  
21 performing the anastomosis to allow blood flow between the pressurized vessel  
22 and a graft vessel.

23 *'038 patent Claim 5.* The method of claim 2, wherein the incision is made  
24 before removing the anvil.

25 30. Claims 8-9 of the '712 patent recite:

26 *'712 patent Claim 8.* A method of performing anastomosis between a  
27 graft vessel and a target vessel, comprising:  
28

1 placing an end of the graft vessel against the side of the target vessel at a  
2 first location;

3 inserting an anvil through the side of the target vessel at a second location  
4 adjacent to said first location;

5 deploying a plurality of connectors to secure the graft vessel to the target  
6 vessel; and

7 creating an opening in the target vessel to allow fluid flow between the  
8 graft vessel and the target vessel.

9 *'712 patent Claim 9.* The method of claim 8, wherein said inserting  
10 comprises pressing said anvil through the side of the target vessel.

11 31. Taking into consideration the contentions advanced by IVIT in the USPTO  
12 Interference Action, including contentions as to claim construction and the understanding of one  
13 skilled in the art, claim 78 of the '268 patent contains actual or potentially interfering and invalid  
14 subject matter in view of at least claims 1, 2, and 5 of the '038 patent and/or claims 8 and 9 of the  
15 '712 patent.

16 32. Cardica seeks a ruling that IVIT is estopped from claiming any subject matter that  
17 was or should have been the subject of the USPTO Interference Action, including any claim in the  
18 '268 patent that is not patentably distinct from any claim corresponding to the count of the USPTO  
19 Interference Action.

20 33. Cardica seeks a ruling pursuant to 35 U.S.C. § 291 that the claims within the '268  
21 patent that interfere with claims in the '038 patent and/or '712 patent are invalid.

22 34. On information and belief, the '268 patent is also invalid by reason of having been  
23 issued in violation of the U.S. patent laws, Title 35 United States Code, including violation of  
24 Sections 112 and 135(b) thereof, and the Rules and Regulations of the Patent & Trademark Office  
25 relating thereto.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Cardica prays the Court for the following relief:

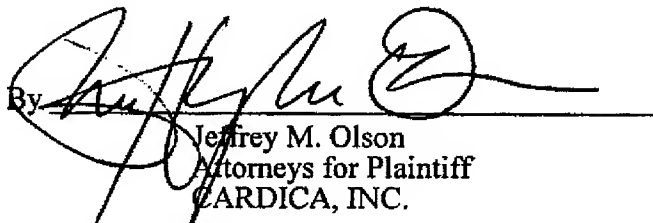
- 3 1. That the Court declare invalid any and all claims in the '268 patent that interfere with  
4 the subject matter of the '038 patent and/or '712 patent;
- 5 2. That the Court declare that the '268 patent invalid, including that the '268 patent fails  
6 to meet the requirements of 35 U.S.C. § 112 and/or is invalid under 35 U.S.C. § 135(b);
- 7 3. That Cardica be awarded its reasonable costs and attorneys' fees;
- 8 4. That Cardica have such other and further legal or equitable relief as the Court may  
9 deem necessary or appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Cardica hereby demands a trial by jury for each and every issue so permitted by law and  
12 statute.

13  
14 SIDLEY AUSTIN LLP

15  
16 Dated: May 22, 2007

17 By  Jeffrey M. Olson  
18 Attorneys for Plaintiff  
CARDICA, INC.

United States District Court  
NORTHERN DISTRICT OF CALIFORNIA **E-filing**

CARDICA, INC., a Delaware corporation,

SUMMONS IN A CIVIL CASE **BZ**

CASE NUMBER:

v.

**C 07 2687**

INTEGRATED VASCULAR INTERVENTIONAL  
TECHNOLOGIES, L.C., a Utah limited liability  
company,

TO: (Name and address of defendant)

INTEGRATED VASCULAR INTERVENTIONAL TECHNOLOGIES, L.C.  
825 North 300 West  
Suite NE 302  
Salt Lake City, Utah 84103

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Jeffrey M. Olson, Esq.  
Paul H. Meier, Esq.  
Samuel N. Tiu, Esq.  
SIDLEY AUSTIN LLP  
555 West Fifth Street  
Suite 4000  
Los Angeles, California 90013

an answer to the complaint which is herewith served upon you, within **20** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wiering

**MAY 22 2007**

DATE \_\_\_\_\_

CLERK

(BY) DEPUTY CLERK

**RETURN OF SERVICE**

DATE

Service of the Summons and Complaint was made by me <sup>1</sup>

Name of SERVER

TITLE

*Check one box below to indicate appropriate method of service*

- ☐ Served Personally upon the Defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure



Court Name: U.S. District Court, WDCA  
Division: 3  
Receipt Number: 34611006600  
Cashier ID: alwaceh  
Transaction Date: 05/22/2007  
Payer Name: specialized legal services i  
nc

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CIVIL FILING FEE

For: specialized legal services inc  
Case/Party: D-CAN-3-07-CV-002607-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 27337  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

C07-2607 BZ

Checks and drafts are accepted  
subject to collections and full  
credit will only be given when the  
check or draft has been accepted by  
the financial institution on which  
it was drawn.

**WELCOME TO THE U.S. DISTRICT COURT, SAN FRANCISCO**  
**OFFICE HOURS: 9:00 A.M. TO 4:00 P.M.**  
**415.522.2000**  
**[www.cand.uscourts.gov](http://www.cand.uscourts.gov)**

**In Addition to the Local Rules, the Following Guidelines Have Been Provided to Ensure That the Filing Process Is Accomplished with Ease and Accuracy. For Additional Information or Assistance, Please Call the above Number During Office Hours.**

1. Documents are to be filed in the Clerk's Office at the location of the chambers of the judge to whom the action has been assigned. We do not accept filings for cases assigned to judges or magistrate judges in the Oakland or San Jose division, per Civil L.R. 3-2(b).
2. This office will retain the original plus one copy of most documents submitted. We will conform as many copies as you bring for your use. Related cases require an extra copy for each related action designated.
3. The copy retained goes directly to the assigned Judge. Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate, unless you have been instructed to do so by court order.
4. In order to facilitate the file stamping process, each original document should be submitted on top of its copies. In other words, group like documents together--as opposed to a set of originals and separate sets of copies.
5. The case number must indicate whether it is a civil or criminal matter by the inclusion of **C** or **CR** at the beginning of the number. Miscellaneous and foreign judgment matters should also be indicated with initials **MISC** or **FJ** at the end of the case number.
6. The case number must include the initials of the judge and/or magistrate judge followed by the letters designating the case Arbitration (**ARB**), Early Neutral Evaluation (**ENE**) or Mediation (**MED**)--if assigned to one of those programs.
7. The document caption should include the appropriate judge or magistrate judge involved in a particular matter or before whom an appearance is being made. This is especially important when submitting Settlement Conference Statements.
8. Documents are to be stapled or acco-fastened at the top. Backings, bindings and covers are not required. Two holes punched at the top of the original document will facilitate processing.
9. Appropriately sized, stamped, self-addressed return envelopes are to be included with proposed orders or when filing documents by mail.

10. Proofs of service should be attached to the back of documents. If submitted separately, you must attach a pleading page to the front of the document showing case number and case caption.
11. There are no filing fees once a case has been opened.
12. New cases must be accompanied by a completed and signed Civil Cover Sheet, the filing fee or fee waiver request form and an original plus **two** copies of the complaint and any other documents. For Intellectual Property cases, please provide an original plus **three** copies of the complaint. Please present new cases for filing before 3:30 p.m., as they take a considerable amount of time to process.
13. Copies of forms may be obtained at no charge. They may be picked up in person from the Clerk's Office forms cabinet or with a written request accompanied by an appropriate sized, stamped, self-addressed envelope for return. In addition, copies of the Local Rules may be obtained, free of charge, in the Clerk's Office or by sending a written request, along with a self-addressed, 10" x 14" return envelope, stamped with \$ **3.95** postage to: Clerk, U.S. District Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102.
14. Two computer terminals which allow public access to case dockets and one terminal with information regarding files at the Federal Records Center (FRC) are located in the reception area of the Clerk's Office. Written instructions are posted by the terminals. Outside of the Clerk's Office, electronic access to dockets is available through PACER. To obtain information or to register call 1-800-676-6851.
15. A file viewing room is located adjacent to the reception area. Files may be viewed in this area after signing the log sheet and presenting identification. Files are to be returned by **1:00 pm**. Under no circumstances are files to be removed from the viewing room.
16. The Clerk's Office can only accept payment by **exact change or check** made payable to Clerk, U.S. District Court. No change can be made for fees or the public copy machine.
17. Two pay copy machines are located in the file viewing room for public use, at fifteen cents (\$.15) per page. Copy cards may be purchased at the snack bar on the first floor. Orders for copywork may be placed through Eddie's Document Retrieval by phoning 415-317-5556. Arrangements may be made to bring in a personal copier by calling the Clerk's Office in advance.
18. We have a drop box for filing when the Clerk's Office is closed. Please see attached for availability and instructions.

### SAN FRANCISCO

Article III Judges	Judges Initials	Magistrate Judges	Judges Initials
Alsup, William H.	WHA	Chen, Edward M.	EMC
Breyer, Charles R.	CRB	James, Maria-Elena	MEJ
Chesney, Maxine M.	MMC	Laporte, Elizabeth D.	EDL
Conti, Samuel	SC	Larson, James	JL
Hamilton, Phyllis J.	PJH	Spero, Joseph C.	JCS
Henderson, Thelton E.	TEH	Zimmerman, Bernard	BZ
Illston, Susan	SI		
Jenkins, Martin J.	MJJ		
Patel, Marilyn Hall	MHP		
Schwarzer, William W	WWS		
Walker, Vaughn R	VRW		
White, Jeffrey S.	JSW		

### SAN JOSE

Article III Judges	Judges Initials	Magistrate Judges	Judges Initials
Fogel, Jeremy	JF	Lloyd, Howard R.	HRL
Ware, James	JW	Seeborg, Richard	RS
Whyte, Ronald M.	RMW	Trumbull, Patricia V.	PVT

### OAKLAND

Article III Judges	Judges Initials	Magistrate Judges	Judges Initials
Armstrong, Sandra B.	SBA	Brazil, Wayne D.	WDB
Jensen, D. Lowell	DLJ		
Wilken, Claudia	CW		

C 07 - 2687

BZ

**U.S. District Court Northern California**

**ECF Registration Information Handout**

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Civil Local Rule 5-4 and General Order 45. This means that you must (check off the boxes ☒ when done):

- ☐ **1) Serve this** ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. **DO NOT** serve the efiler application form, just this handout.

Each attorney representing a party must also:

- ☐ **2) Register** to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- ☐ **3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- ☐ **4) Access** dockets and documents using **PACER** (Public Access to Court Electronic Records). If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

**All subsequent papers submitted by attorneys in this case shall be filed electronically. Unrepresented litigants must file and serve in paper form, unless prior leave to file electronically is obtained from the assigned judge.**

ECF registration forms, interactive tutorials and complete instructions for efilng may be found on the ECF website: <http://ecf.cand.uscourts.gov>

**Submitting Initiating Documents**

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on **[Judges]**.

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on. You do not need to efile or email the Civil Cover Sheet, Summons, or any documents issued by the court at case opening; note that you do need to efile the Summons Returned.

**Converting Documents to PDF**

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system. Instructions for creating PDF files can be found at the ECF web site: <http://ecf.cand.uscourts.gov>, and click on **[FAQ]**.

**Email Guidelines:** When sending an email to the court, the subject line of the email **must** contain the **case number**, **judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

**Examples:** The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

Type of Document	Email Subject Line Text
Complaint Only	03-09999 CRB Complaint
Complaint and Notice of Related Case	03-09999 CRB Complaint, Related Case
Complaint and Motion for Temporary Restraining Order	03-09999 CRB Complaint, TRO

**Questions**

Almost all questions can be answered in our **FAQs** at **<http://ecf.cand.uscourts.gov>**, please check them first.

You may also email the ECF Help Desk at [ECFhelpdesk@cand.uscourts.gov](mailto:ECFhelpdesk@cand.uscourts.gov) or call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from 9:00am to 4:00pm Pacific time, excluding court holidays.